

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Electronic Delivery of MVPD Communications)	MB Docket No. 17-317
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105

**REPLY COMMENTS OF
NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (“NCTA”) submits these reply comments in response to the comments filed in the above-captioned proceeding on the issue of modernization of broadcaster election notices.¹

DISCUSSION

The record in this proceeding overwhelmingly supports use of electronic communications by multichannel video programming distributors (“MVPDs”) to provide notices to consumers. Large and small cable operators and satellite providers alike describe numerous benefits to modernizing a variety of required consumer notices.² The record also supports a shift to

¹ See *In re Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 32 FCC Rcd 10755 (2017) (“*Notice*”). Reply comments were scheduled to be due on March 2, 2018. *In re Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Proposed Rule, 83 Fed. Reg. 2119 (Jan. 16, 2018). Because the government was closed for inclement weather that day, these replies are timely filed on March 5, 2018 pursuant to the Commission’s rules. See 47 C.F.R. § 1.4(e)(1).

² See Verizon Comments at 2 (supporting proposals to modernize and streamline notice rules by permitting electronic delivery, which “is more efficient and environmentally friendly”); Amer. Cable Assoc. (“ACA”) Comments at 2 (“The Commission should modernize its subscriber notice requirements to make them more efficient, effective, and reflective of the times.”); NTCA Comments at 4 (supporting “the Commission’s proposal to . . . allow for updated communications methods, . . . [which] will save valuable, and thinly stretched, rural MVPD resources while still ensuring subscribers have sufficient information regarding the service(s) they are receiving”); AT&T Comments at 1 (“[P]ermitting certain video providers to deliver privacy notifications to their subscribers using a verified email address . . . recognizes that consumers increasingly prefer the ease and effectiveness of communicating electronically with their service providers[.]”); Dish Network Comments at 1 (supporting the Commission’s proposal to allow subscriber privacy notifications to be delivered electronically, which “will increase customer convenience and access to this information, and is consistent with how certain

electronic means for the delivery to MVPDs of required broadcaster carriage elections.

As noted in our comments, as the Commission moves toward allowing greater use of electronic communications, NCTA-member cable operators would support changes to the must carry/retransmission consent election notifications that would simplify and streamline that process.³ The Commission, however, should reject any proposals that are designed merely to shift the regulatory burdens to MVPDs.

The Communications Act requires that broadcast stations “make an election between the right to grant retransmission consent . . . and the right to [must carry].”⁴ And current Commission rules require that each broadcaster “send via certified mail to each cable system in the station’s defined market a copy of the station’s election statement with respect to that operator.”⁵ Broadcasters and MVPDs alike explained in initial comments that the current election notice process is unnecessarily burdensome and in need of modernization. We proposed a simplified system that would permit a broadcaster to send one e-mail to each cable operator identifying the operator’s systems for which the broadcaster is making elections.⁶ This improved process would relieve broadcasters of the costs and burdens of sending elections via certified

other relevant customer communications are delivered”).

³ See NCTA Comments at 13-15.

⁴ 47 U.S.C. § 325(b)(3)(B); *see also* 47 C.F.R. § 76.64(f).

⁵ 47 C.F.R. § 76.64(h).

⁶ See NCTA Comments at 13-14.

mail to each individual system. In fact, our approach would no longer require use of the postal service at all.⁷ Verizon proposed a similar approach.⁸

The record reflects that the best way for the Commission to modernize its notice requirement implementing the statutory obligation is to adopt our e-mail proposal. There is overwhelming support in the record for eliminating the requirement to deliver notices by certified mail,⁹ and a recognition that e-mail is “a more environmentally-friendly and efficient mechanism.”¹⁰ Indeed, certain broadcasters recognized that carriage election notices delivered via e-mail would be beneficial.¹¹ Nexstar lists a number of benefits of using e-mail, explaining that

[T]he requisite election notices can be created and distributed electronically to MVPDs in a fraction of the time the current certified mail process requires. In addition, electronic delivery would significantly reduce the need to waste material resources or expend funds to pay for postage and premium delivery services. Moreover, electronic delivery has the capability to provide almost instantaneous delivery confirmation, and in some instances, read receipts, a secondary confirmation of a successful delivery of the notices. MVPD recipients also would be able to easily search and/or store the electronically delivered notices. In

⁷ As explained in our comments, NCTA-member cable operators would be willing to identify an e-mail address that would serve as a single point of contact for all cable systems served by that operator, and to list that e-mail address on an easily-accessible landing page for each FCC-hosted cable system public file maintained online by that cable operator. To ensure that the e-mail was properly received, notices sent to this operator-supplied e-mail address would generate an automatic return message to the broadcaster acknowledging receipt. *See id.* at 14.

⁸ *See* Verizon Comments at 13-14.

⁹ *See, e.g.*, Nat’l Assoc. of Broad. (“NAB”) Comments at 3-4 (delineating the current costs involved for complying with the certified mail requirement); CBS Corp., the Walt Disney Co., 21st Century Fox, Inc., Univision Communications Inc., ABC Tel. Affiliates Assoc., CBS Tel. Network Affiliates Assoc., FBC Tel. Affiliates Assoc., and NBC Tel. Affiliates (“CBS *et al.*”) Comments at 5 (same); Nexstar Comments at 4 (same).

¹⁰ Verizon Comments at 14.

¹¹ *See, e.g.*, America’s Pub. Tel. Stations, Corp. for Pub. Broad., & Pub. Broad. Service (“Public Broadcaster”) Comments at 3-4 (supporting a variety of choice in approaches, including e-mail, so long as the notice method would provide “actual notice to the MVPD and the broadcaster’s ability to demonstrate election by the deadline”) (emphasis in original); Nexstar Comments at 5 (noting that “electronic delivery or email delivery would provide broadcasters with the same reduced expenses and increased efficiency as sought by the MVPDs with respect to their required subscriber notices”).

addition, email notices are easily convertible to pdf files for easy uploading to the broadcast station's online public inspection file¹²

Other broadcaster proposals, however, would unfairly impose new burdens on cable operators. For example, NAB and some other broadcast commenters propose a problematic approach whereby the election notice requirement would be satisfied merely by broadcasters "placing their elections in their online public files."¹³ As Dish Network explained, such an approach "would be unworkable for MVPDs, as it would require MVPDs to search hundreds of public files for new election requests. It would also not provide safeguards to ensure that the election procedures were followed, and that notice was provided and received in a timely manner."¹⁴ ACA adds that "[s]ince the must carry rules are designed to benefit broadcast stations, it would be unfair to require cable operators to take additional steps to determine which of a broadcaster's carriage rights they are electing, particularly when the MVPD has come to rely on the direct delivery of the notice."¹⁵

Large cable operators may carry hundreds of different broadcast television stations nation-wide, with different complements of stations carried by different systems.¹⁶ Relieving broadcasters of the requirement that they must "send" an election notification (*in addition* to placing the notification in their public files) that identifies the systems on which they elect to be carried while at the same time forcing MVPDs to dig through broadcasters' individual station public files for relevant election requests would effectively be exchanging one regulation for an even more burdensome regulation. As AT&T describes, shifting such burdens to MVPDs would

¹² Nexstar Comments at 6.

¹³ NAB Comments at 6-7; *see also* CBS *et al.* Comments at 8-9; Meredith Comments at 1.

¹⁴ Dish Network Comments at 7.

¹⁵ ACA Comments at 13.

¹⁶ *See* NCTA Comments at 15.

be “unwarranted and inequitable.”¹⁷ It would also be contrary to the Commission’s goal of “reducing” unnecessary requirements pursuant to its modernization initiative.¹⁸

Although the Commission explicitly sought comment on the narrow issue of *modernizing* delivery of election notices to reduce burdens,¹⁹ several broadcasters seek to expand the scope of this proceeding to reach broader retransmission consent/must-carry issues. In particular, some broadcasters urge the Commission to substantively change the retransmission consent/must-carry regime by “reclassify[ing] the default election for cable to retransmission consent instead of must carry.”²⁰ These broadcasters have not demonstrated the need for or benefits of making this change, nor do they address “the significant legal and financial consequences” involved.²¹

Consistent with the foregoing, the Commission should adopt our carefully-constructed e-mail approach to broadcast election notices. At the same time, it should reject any proposals that, instead of reducing burdens, would unjustifiably shift burdens to cable operators. In sum, we agree that in its effort to “relieve regulated entities of unnecessary burdens, [the Commission]

¹⁷ AT&T Comments at 6.

¹⁸ *See Notice* ¶ 1 (“With this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.”).

¹⁹ *See id.* ¶ 26; *see also id.* ¶ 25, n.88 (clarifying that, although some commenters proposed “even broader changes to the must carry/retransmission consent system, in this docket we are focused exclusively on notice issues”).

²⁰ *See* NAB Comments at 2-6; CBS *et al.* Comments at 3-7; Nexstar Comments at 8; Meredith Comments at 1.

²¹ *See Notice* ¶ 26 & n.91. For example, broadcasters promoting Commission action to change the default election make much of “harmonizing” or “standardizing” the satellite and cable broadcast election procedures. *See, e.g.*, Nexstar Comments at 8; NAB Comments at 11-12; CBS *et al.* Comments at 7-8. However, it is unclear whether such harmonization is necessary or favorable as a legal and policy matter. Law and policy governing broadcast carriage by cable and satellite providers evolved at different times and is governed by different statutory and regulatory provisions.

should take care that, in providing relief for one segment of the communications industry, it does not create additional burdens for another.”²²

Respectfully submitted,

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²² ACA Comments at 13.